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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 431

BOSS HOTELS COMPANY,
Petitioner,

vs.

CITY OF DES MOINES, IOWA, CHARLES ILES, GEORGE WHITMER, JENS GROTHE, WALLACE BUSS, GEORGE NAHAS, Members of the City Council of the City of Des Moines, Iowa, RIVER HILLS MOTOR INN COMPANY, F. W. WEITZ and NATIONAL MOTOR INN CORP.,
Respondents.

BRIEF

Of Petitioner Opposing Motion for Damages.

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St. Louis Law Printing Co., Inc., 415 N. Eighth Street, CEntral 1-4477.

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BRIEF

Of Petitioner Opposing Motion for Damages.

Your Petitioner, Boss Hotels Company, shows the Court:

The Respondent, City of Des Moines, Iowa, prays for damages in the amount of $49.06 per day commencing May 11, 1966. The City apparently claims $26.71 per day as to Parcel T-3 and $22.35 per day as to Parcel T-1, a total of $49.06 per day. The City evidently takes the position that the City would have completed the sales of Parcels T-1 and T-3, obtained the purchase prices there-

for and applied such on the loan from the Federal Government if Boss Hotels had not sought a Writ of Certiorari.

If it is assumed that United States Supreme Court finds that the Petition for Writ of Certiorari was without foundation, damages should neyertheless be denied the City for the following reasons:

1. Attached hereto as Appendix "A" is the Decree of the Polk County, Iowa, District Court in Equity Cause 70,472 dated and entered March 25, 1966. The United States Supreme Court will observe that the City of Des Moines and the other Defendants in said cause are permanently enjoined from entering into any contract for the sale of Parcel T-3 to River Hills Motor Inn Company. The City of Des Moines and River Hills Motor Inn Company have appealed such decision to the Iowa Supreme Court where the case is now pending. **It is evident that the City, because of such injunction could not have completed the sale of Parcel T-3 to River Hills Motor Inn Company and could not have applied the purchase price thereof toward any interest owing by the City to the Federal Government.** The City is practicing a deception on the United States Supreme Court. The City well knew when it made its claim for damages that the injunction was in full force and effect and that the City could not have suffered any damages by reason of the action of Boss Hotels.

2. At no time did Boss Hotels obtain either a temporary or permanent injunction against the City or any of the Respondents. Therefore, so far as Boss Hotels is concerned the City could have completed the sales of Parcels T-1 and T-3. In other words, Boss Hotels did not hold up completion of the sales by the City. Hence the City suffered no damage.

3. The claim for damages assumes without justification, firstly, that River Hills and Motor Inn Corp. would have

completed the sales and paid the purchase prices, and secondly, that if the City had received the purchase price it would have somehow during the period after May 11, 1966, repaid the loan obtained from the Federal Government. These are wholly unwarranted assumptions, and to award damages would be based on mere speculation.

Wherefore, Petitioner prays that damages be denied.

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